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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 GENE E. SMITH, SR., et al.,

2:03-CV-1589 JCM (LRL)

9 Plaintiffs,

Date: N/A

10 v.

Time: N/A

11 ATC/VANCOM INC. D/B/A

12 ATC/VAN DER AA GROUP, et al.,

13 Defendants.
14

15 **ORDER**

16 Presently before the court are plaintiff Gene E. Smith Sr.'s¹ motions for relief from judgment
17 (Doc. ## 115, 116), motion for change of venue (Doc. # 117), and motion for removal of judges
18 (Doc. # 119). To date, defendant has not filed an opposition.
19

20 **Background**

21 On April 24, 2007, all parties appeared before this court and argued cross-motions for
22 summary judgment in this action arising out of the termination of plaintiff's employment. The court
23 granted defendant's motion for summary judgment and denied plaintiff's motion for summary
24 judgment. (Doc. # 93). The court dismissed the action with prejudice. (*Id.*).
25

26 Plaintiff Smith now requests relief from the court's May 16, 2007, order, granting summary
27

28 ¹Plaintiff Smith is an incompetent person and represented by his court-appointed guardian,
Ida M. Clark. (*See* Doc. # 115, at 1).

1 judgment for defendant. (*See* Doc. # 115, at 1). In addition, plaintiff requests that the court remove
 2 the assigned judges from this case and “change venue.” (*See* Doc. # 117, 119).

4 Analysis

5 **I. Plaintiff’s motions for relief from judgment (Doc. ## 115, 116) are denied.**

6 Plaintiff argues reconsideration is appropriate pursuant to Fed. R. Civ. P. 60(b). Under Rule
 7 60(b), the court may relieve a party from a final judgment or order where the court finds “fraud
 8 (whether . . . intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.” *Id.* In
 9 order to set aside a judgment or order because of fraud upon the court under Rule 60(b) . . . , the
 10 burden is on the moving party to establish fraud by clear and convincing evidence.” *England v.*
 11 *Doyle*, 281 F.2d 304, 309–10 (9th Cir. 1960).

12 Here, plaintiff’s motions for relief from judgment (Doc. ## 115, 116) cannot support a
 13 finding of fraud. In alleging fraud on the court, plaintiff’s motions contain only conclusory
 14 allegations of misrepresentation and corruption. Thus, plaintiff’s motions do not prove fraud by
 15 “clear and convincing” evidence.

16 Plaintiff’s motions for relief from judgment (Doc. ## 115, 116) are hereby DENIED.

18 **II. Plaintiff’s motions for change of venue and removal of judges (Doc. ## 117, 119) are denied, as moot.**

20 Because plaintiff was unsuccessful in setting aside the court’s May 16, 2007, order, summary
 21 judgment in favor of defendant remains the disposition of this case. Thus, the court need not
 22 consider any change of venue or removal of judges because it plaintiff’s case is dismissed with
 23 prejudice.

24 Plaintiff’s motions for change of venue and removal of judges (Doc. ## 117, 119) are hereby
 25 DENIED, as moot.

26 . . .

27 . . .


Conclusion

UPON CONSIDERATION of plaintiff's motion, the memorandum of points and authorities, and the papers and pleadings on file in this matter,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motions for relief from judgment (Doc. ## 115, 116) be, and the same hereby are, DENIED.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motions for change of venue and removal of judges (Doc. ## 117, 119) be, and the same hereby are, DENIED, as moot.

DATED this 15 day of May, 2008.


UNITED STATES DISTRICT JUDGE